

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Revision of the Commission's Rules to Ensure)	CC Docket No. 94-102
Compatibility with Enhanced 911 Emergency)	
Calling Systems)	
)	
Request for Waiver by Verizon Wireless)	FCC 01-299
To: The Commission		

REPLY OF VERIZON WIRELESS

Verizon Wireless hereby submits its reply, in the above-captioned proceeding, regarding its petition for reconsideration of certain discrete aspects of the *Order* which granted it a waiver of the Phase II enhanced 911 (“E911”) requirements.¹ As Verizon Wireless’s petition makes clear, the Commission should reconsider the strict liability standard contained in paragraph 35 of the *Order* governing evaluations of Verizon Wireless’ compliance efforts for meeting specific E911 Phase II benchmarks. Specifically, Verizon Wireless objected to the proviso that it will be deemed “noncompliant” should it fail to meet prescribed performance benchmarks, even if caused by circumstances beyond its control such as the unavailability of workable and compliant equipment, as a violation of Section 503 of the Act and the Commission’s own rules.²

There is ample support in the record from other carriers and manufacturers maintaining that the Commission’s strict liability standard is contrary to law. Commentors share Verizon Wireless’ concern that the Commission’s zeal to demonstrate

¹ See Revision of the Commission’s Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, *Order*, CC Docket No. 94-102, FCC 01-299 (rel. October 12, 2001) (“*Order*”).

the seriousness with which it will review any future waiver requests and compliance efforts may violate standards of due process and basic fairness. Thus, while Verizon Wireless will continue to strive to meet the conditions of the waiver *Order* and the Commission rules, the Commission must not give short shrift to legitimate problems for E911 compliance, such as the unavailability of workable and compliant technology from vendors. On this point, Verizon Wireless principally responds to the opposition of NENA, APCO and NASNA (“PSAP organizations”). The two other requests raised by Verizon Wireless’s petition – to correct the interim EFLT conditions and to seek OMB approval of the quarterly reporting requirements – are unopposed in the record, and should be granted.

I. THE RECORD SUPPORTS REVOKING THE STRICT LIABILITY E911 COMPLIANCE STANDARD

Other petitioners, in addition to Verizon Wireless, have asked the Commission to reconsider adoption of the apparent strict liability standard it imposed on carriers for purposes of E911 compliance.³ The petitions show why the FCC’s prejudgment of future E911 waiver requests and departure from the governing legal standard for waivers, which recognizes that circumstances beyond a carrier’s control may demonstrate “good cause” and “special circumstances” warranting a deviation from a general rule, is both bad policy and is unsupported by prior Commission precedent.⁴ Similarly, Sprint PCS’s comments in this proceeding question whether the Commission has the legal authority to

² 47 U.S.C. § 503; 47 C.F.R. § 1.80.

³ *See generally* petitions for reconsideration by Cingular Wireless at 22-24 and by Nextel at 10-17.

⁴ *See generally* petitions for reconsideration by Nextel at 12-16, Cingular Wireless at 24, and Verizon Wireless at 6-7. In addition, many commenting parties stated their support for Verizon’s petition and objected to the strict liability standard. *See generally* comments by Nokia and Motorola, RTG and OPASTCO, RCA, Cellular Mobile Systems of St. Cloud, LLC, Wireless Communications Venture, South No. 5 RSA LP, Copper Valley Wireless, Inc., Southern Illinois RSA Partnership, and CTIA.

adopt a strict liability standard, which if adopted, would represent a new waiver standard and a radical change in Commission precedent.⁵

The PSAP organizations assert that the Commission did no more than *warn* carriers that it would treat a failure to satisfy waiver conditions in the same manner as a rule violation, and that such violation would be subject to *possible* enforcement action.⁶ The PSAP organizations' attempt to reconcile the express language of the FCC's *Order* with general enforcement practices for other rule violations is unpersuasive and inapplicable here.⁷ Verizon Wireless petitioned for reconsideration because the FCC's pronouncements in the waiver *Order* departed from its general practices in favor of a predetermined finding of noncompliance, even if compliant equipment is unavailable or due to other factors beyond a carrier's control.

Moreover, several carriers, vendors and CTIA filed comments in support of reconsideration of the FCC's E911 strict liability standard.⁸ Specifically, Nokia and Motorola stated that the various waiver implementation orders contain language that may be construed as imposing strict liability for any failure to meet the implementation benchmarks, and correctly noted that the determination that a carrier is noncompliant should only be made after a meaningful opportunity to seek a waiver or otherwise demonstrate compliance.⁹ Several smaller wireless carriers, the Rural Cellular Association ("RCA"), Rural Telecommunications Group ("RTG"), and the Organization

⁵ Sprint PCS comments at 3-4. On this basis, Sprint PCS argues that the Commission did not intend to adopt a strict liability standard in the Phase II waiver orders and requests that the Commission clarify this point accordingly.

⁶ Comments by NENA, APCO and NASNA at 2-3 (emphasis added).

⁷ *Id.*

⁸ *See generally* comments by Nokia and Motorola, RTG and OPASTCO, RCA, Cellular Mobile Systems of St. Cloud, LLC, Wireless Communications Venture, South No. 5 RSA LP, Copper Valley Wireless, Inc., Southern Illinois RSA Partnership, and CTIA.

⁹ Comments by Nokia and Motorola at 1, 3-9.

for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”), raised similar objections to the Commission’s compliance language.¹⁰

RCA agrees with Verizon Wireless that carriers should not be deemed noncompliant if they fail to meet a benchmark due to unavailability of compliant equipment and that the waiver process should continue to be available to all wireless carriers that are unable to comply due to circumstances beyond their control.¹¹

Sprint PCS recognizes that a strict liability standard would be a change in the governing legal standard for waivers. On that basis Sprint PCS asserts that since the Commission failed to discuss any reasons for such a departure, or even their authority to make such a departure, the Commission did not intend to adopt a new waiver standard.¹² Verizon Wireless cannot divine the Commission’s intent. If the Commission did not intend to adopt a new strict liability standard for evaluating compliance with Phase II E911 waiver conditions or potential future waiver requests, at a minimum, it must clarify its position. If, to the contrary, the FCC did intend to adopt such a standard, it must reconsider its position in light of the petitions and comments received in the docket, and given applicable provisions of the Communications Act and the Commission’s own rules.

II. THE BALANCE OF VERIZON WIRELESS’ PETITION IS UNOPPOSED AND SHOULD BE GRANTED

Apart from seeking reconsideration of the Commission’s strict liability determination in paragraph 35 of the Order, Verizon Wireless’ petition raised two

¹⁰ See comments by RTG and OPASTCO at 2; RCA at 1-4; Cellular Mobile Systems of St. Cloud, LLC, Wireless Communications Venture, and South No. 5 RSA LP at 1-4; Copper Valley Wireless, Inc. at 1-4; Southern Illinois RSA Partnership at 1-4.

¹¹ Comments by RCA at 2-4.

¹² Comments by Sprint PCS at 3-4.

additional issues of concern: the need to correct the interim EFLT conditions imposed and to seek OMB approval of the quarterly E911 reporting requirements.

First, Verizon Wireless requested correction of the conditions pertaining to deployment of the interim EFLT solution regarding its projected accuracy and the deployment schedule for Nortel switches. Commentors to this proceeding did not object to Verizon Wireless's request and Verizon Wireless' petition provided ample support for the requested relief.

The Commission should eliminate the specific accuracy reference as a condition of Verizon Wireless' waiver. EFLT is an additional interim solution that is expected to provide location services better than Phase I for legacy CDMA mobiles, but the accuracy estimates were preliminary averages and were not offered as a performance standard. In addition, EFLT is not the mainstay of Verizon Wireless's location solution; AGPS-AFLT is the Phase II handset solution that was chosen for compliance with the FCC's accuracy requirements. As for the deployment schedule for Nortel switches, there was no basis in the record for the April 2002 deadline instead of the August 2002 date requested by Verizon Wireless. The August date was based on vendor representations and should not be arbitrarily supplanted by an earlier deadline.

Second, Verizon Wireless showed that the four-year reporting burden for Phase II reports does impose information collection applicable to ten or more entities and thus must be approved by the Office of Management and Budget ("OMB") pursuant to the Paperwork Reduction Act ("PRA"). In fact, the Bureau requested that Verizon Wireless file a list of all its individual licensee affiliates covered by its November 9, 2000 Phase II E911 update. The PSAP organizations filed comments requesting that the FCC resolve

this issue with guidance from OMB. Their concern is ensuring legal sufficiency for the reporting process rather than leaving it in “limbo,” even if some reports are delayed.¹³ The FCC should resolve this issue, as supported by the PSAP organizations, by obtaining OMB approval for the quarterly reporting requirements. Until it does so, these requirements are invalid.

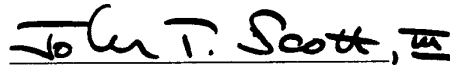
III. CONCLUSION

For the foregoing reasons, the Commission should grant Verizon Wireless’s petition for reconsideration in its entirety.

Respectfully submitted,

VERIZON WIRELESS

By:

A handwritten signature in black ink that reads "John T. Scott, III". The signature is written in a cursive style with a horizontal line underneath the name.

John T. Scott, III
Vice President and Deputy General
Counsel – Regulatory Law

Francis Malnati
Executive Director Regulatory Matters

Lolita D. Smith
Associate Director Regulatory Matters

Verizon Wireless
1300 I Street, N.W., Suite 400-West
Washington, D.C. 20005
(202) 589-3760

¹³ Comments by NENA, APCO and NASNA at 5-6.

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Certificate of Service

I hereby certify that on this 4th day of January copies of the foregoing “Reply of Verizon Wireless” in CC Docket 94-102 were sent by first class mail to the following parties:

Robert M. Gurss
Counsel for APCO
Shook Hardy & Bacon, LLP
600 14th Street, NW – Suite 800
Washington, DC 20005

J. R. Carbonell
Cingular Wireless, LLC
5565 Glenridge Connector – Suite 1700
Atlanta, GA 30342

Michael Altschul
CTIA
Suite 800
1250 Connecticut Avenue, NW
Washington, DC 20036

Mary E. Brooner
Motorola, Inc.
1350 I Street, NW
Washington, DC 20005

Laura H. Phillips
Counsel for Nextel
Dow, Lohnes & Albertson, PLLC
Suite 800
1200 New Hampshire Avenue, NW
Washington, DC 20036

Leo R. Fitzsimon
Nokia, Inc.
Suite 910
1101 Connecticut Avenue, NW
Washington, DC 20036

Stuart Polikoff
OPASTCO
21 Dupont Circle, NW – Suite 700
Washington, DC 20036

Sylvia Lesse
Counsel for Rural Cellular Association
Kraskin, Lesse & Cosson, LLP
2120 L Street, NW – Suite 520
Washington, DC 20037

Luisa L. Lancetti
Sprint PCS
401 9th Street, NW – Suite 400
Washington, DC 20004

John A. Prendergast
Counsel for Southern Illinois RSA
Partnership & Copper Valley Wireless, Inc.
Blooston, Mordofsky, Dickens, Duffy &
Prendergast
2120 L Street, NW – Suite 300
Washington, DC 20037

Michael R. Bennet
Counsel for Cellular Mobile Systems of St.
Cloud, LLC, Wireless Communications
Venture, South No. 5 RSA LP, and Rural
Telecommunications Group
Bennet & Bennet, PLLC
1000 Vermont Avenue, NW – 10th Floor
Washington, DC 20005

James R. Hobson
Counsel for NENA and Tarrant County
9-1-1 District
Miller & Van Eaton, PLLC
Suite 1000
1155 Connecticut Avenue, NW
Washington, DC 20036



Sarah E. Weisman